

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

v. : CIVIL ACTION
:
:
:
: NO.

PRETRIAL ORDER FOR ARBITRATION CASE

AND NOW, this day of , , after receiving information that this case is eligible for arbitration, IT IS ORDERED as follows:

1. All discovery shall proceed forthwith and continue in such manner as will assure that all requests for and responses to discovery will be served, noticed and completed no later than ninety (90) days after the date the answer to the complaint is filed as set forth in Local Rule of Civil Procedure 53.2, 4, A. No discovery will be allowed after the arbitration except upon order of this Court and upon good cause shown as to why the discovery requested could not have been reasonably anticipated and completed prior to arbitration.

2. No dispositive motions will be considered if filed after the arbitration unless good cause is shown as to why the motion could not have been reasonably anticipated and filed prior to arbitration.

3. In the event there is a duly perfected demand for trial de novo after an arbitration award:

(A) All parties shall prepare and file with the Clerk of Court (with copy to Chambers) their pretrial memoranda, in accordance with this Order and Local Rule of Civil Procedure 16.1(c), plus a stipulation and statement of facts as described in Local Rule

16.1(d)2(b)2)(A) through (E) **within twenty (20) days after the demand for trial de novo is entered on the docket by the Clerk of Court;** and

(B) **Within ten (10) days after the demand for trial de novo is entered on the docket by the Clerk of Court,** counsel for each party shall serve upon counsel for every other party:

(1) the original or a copy of each exhibit they expect to offer at the trial de novo in furtherance of their respective contentions. Each party shall mark their trial exhibits in advance of trial with consecutive numbers appropriately prefixed with an identifying letter of counsel's choice (i.e., P-1, P-2; D-1, D-2); (2) curriculum vitae for each expert witness expected to testify; and, (3) a specific designation of each discovery item, including specific lines of deposition testimony, answers to interrogatories, and requests for admission, documents, photographs and the like, to be offered into evidence.

4. This case will be called for trial **twenty-five (25) days after the demand for trial de novo is entered on the docket by the Clerk of Court.**

5. As to the trial de novo, any party having an objection to: (A) the admissibility of any exhibit based on authenticity; (B) the adequacy of the qualifications of an expert witness expected to testify; or (C) the admissibility for any reason (except relevancy) of any item of evidence expected to be offered; shall set forth separately each such objection, clearly and concisely, in their pretrial memorandum. Such objection shall describe with particularity the ground and the authority for the objection. Unless the Court concludes at trial that manifest injustice will result, the Court can be expected to overrule any objection offered at trial in respect

to any matter covered by (A), (B), and/or (C) above, if the Court concludes that the objection should have been made as required by this Order.

6. No later than the discovery deadline set forth in Paragraph 1 above:

(A) All parties shall pursuant to Fed. R. Civ. P. 26(a)2(A) and (B), exchange all experts' reports and complete depositions pursuant to Fed. R. Civ. P. 26(b)(4).

(B) Any party expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 shall declare such intent a written offer of proof filed and served on all opposing parties (with a courtesy copy to Chambers). Such declaration must include at least the name of each such witness, the opinion to be offered, the basis for the opinion, and if not disclosed by prior discovery, the background, training, experience and contact with the facts of the case sufficient to lay a foundation for the opinion.

(C) Any party objecting to the admissibility of any proffered opinion shall include an objection clearly and concisely in their pretrial memorandum. No party shall include any such objection on the basis that the expert opinion or lay opinion provided is vague, incomplete or ambiguous unless counsel for the objecting party has attempted to resolve such perceived failings with the offering party and certifies to that effort and the results in the written objection.

7. As to the trial de novo, if any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of counsel prior to trial for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief from the Court prior to trial. **THE COURT WILL NOT INTERRUPT TRIAL PROCEEDINGS ON THE APPLICATION OF ANY PARTY FOR AN "OFFER OR PROOF."**

8. Only the testimony of those witnesses and those exhibits, designated discovery items, and testimony of expert witnesses whose reports, depositions, and qualifications or lay opinion testimony have been furnished in the manner set forth in the Federal Rules of Civil Procedure and this Order, shall be considered by the Court for admission into evidence at trial, unless stipulated to by all affected parties and approved by the Court, or by Order of Court so as to avoid manifest injustice.

9. Presentation of testimony by all witnesses in person in the Courtroom is preferred and expected by the Court. A stipulation of counsel that deposition testimony may be used at trial is not binding on the Court. If any party expects to contend that a witness is unavailable at the time of the trial de novo as defined in Federal Rule of Civil Procedure 32(a)(3), and if the Court rules that deposition testimony may be used, the Court expects use of oral or videotape depositions at such trial of any such witness whose testimony a party believes essential to the presentation of that party's case, whether that witness is a party, a non-party or an expert. The unavailability of any such witness will not be ground to delay the commencement or progress of an ongoing trial de novo. In the event leave of court is secured and a deposition is to be offered, the offering party shall file with the Court, prior to the commencement of the trial de novo, a copy of the deposition transcript, but only after all efforts have been made to resolve objections with other counsel. Unresolved objections shall be noted in the margin of the deposition page(s) where a Court ruling is necessary and a covering list of such objections supplied therewith.

10. At least two days before the trial de novo date, each party shall submit proposed jury instructions IN DUPLICATE (ONE POINT PER PAGE) and proposed jury

interrogatories IN DUPLICATE to the Court (Chambers, Room 11614) along with a word processing disc containing these jury instructions and interrogatories. The original shall be filed with the Clerk of the Court. On the first day of trial de novo, each party shall respond in writing to each other party's proposed jury instructions and jury interrogatories, IN DUPLICATE (ONE POINT PER PAGE). Supplemental proposed jury instructions may be submitted only for good cause and with the permission of the Court. Two copies of all submissions and a computer disc shall be delivered to Chambers (Room 11614). The original shall be filed with the Clerk.

11. Deposition transcripts for use at trial: Transcripts of all depositions in this case shall be submitted to chambers in hard copy and in WordPerfect 8.0 (or lower version) or ASCII format on 3.5" floppy disk no later than two days before the trial date.

Each deposition should be saved on a disk under the deponent's last name and the date of the deposition. For example, if it is Jane Smith's deposition from May 9, 1997, it should be saved as "smith509." The name given to each deposition on the disk should make the deposition readily identifiable to the user. Multiple depositions may be saved on the same disk and that procedure is encouraged.

The basic purpose of these disks is to allow me to search for and monitor the use of impeachment material when raised by counsel during cross examination of a party or witness. I will be searching the depositions on a lap top computer for specific pages using a combination of letters and the page number. Thus, I would prefer if the page numbers of the depositions on the disks be designated as "Page 4," "PG 4," "P 4," or some other combination of letter(s) and page number.

If use of the page numbers is not possible, then the page breaks of the depositions on the disks must match the page breaks of the depositions in the hard copies. For example, if counsel refers to page 26 of a deposition in hard copy, that page should be page 26 in Word Perfect when I call up the deposition on the computer. You may have to re-format the deposition in order to achieve this result.

I recognize that you may have to obtain these disks from a court reporting service. If you encounter undue technical problems in obtaining these disks, please contact my chambers as soon as possible. The Court will expect counsel to comply with this order unless excused by the Court.

12. At the commencement of trial de novo: (A) the Court shall be supplied by all parties with TWO COPIES of each trial exhibit in a ring binder tabbed by exhibit number, and TWO COPIES of a schedule of exhibits which shall briefly describe each exhibit; (B) each party shall present in the Courtroom for use by the jury and opposing counsel, eight ring binders tabbed by exhibit number, containing copies of each trial exhibit. Photocopies of all trial exhibits which are photographs shall be placed in the appropriate ring binder. Counsel will be responsible to place the original exhibits admitted into evidence on the shelf of the lectern during the trial de novo. At the conclusion of the trial de novo, counsel shall retrieve all original exhibits and preserve them for post trial de novo proceedings.

13. At least two days before the trial de novo date, party shall file and submit two copies to Chambers of any special proposed voir dire questions they deem required by the circumstances of this particular case. The court will conduct a general voir dire and consider the proposed special questions of counsel at that time.

14. **EXTENSIONS OF TIME:** Any necessary application for extension of any time deadlines, change in conference(s) or trial date(s) set forth in this Order shall be made by written motion filed in conformity with Local Rule of Civil Procedure 7.1 and served no later than ten days prior to the date sought to be changed or extended. Any such motion shall include a factual verification of counsel or relevant party or witness showing good cause for the request and shall contain a statement of the position of all other parties as to the request.

15. If the parties wish a settlement conference, application should be made by letter to Courtroom Deputy Harry E. Grace who will arrange such conference.

LOWELL A. REED, JR., S.J.

Form: (7/17/98)